James J. R. Talbot
Senior Attorney

Suite 1000
1120 20th Street, N.W.
Washington, D.C. 20036
202-457-2131
FAX 832-213-0300
EMAIL jjtalbot@att.com

February 18, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW,
Room TWB 204
Washington, DC 20554

Re: *Ex Parte*, International Settlements Policy Reform, International Settlement Rates, IB Docket Nos. 02-324 & 96-261.

Dear Ms. Dortch:

AT&T Corp. ("AT&T") submits this letter in response to recent *ex parte* submissions by various parties in this proceeding.

As described below, the record shows that the existing settlement rate benchmarks are now far in excess of underlying costs. Revised benchmarks reflecting current data are required to assist U.S. carriers to negotiate further reductions with foreign carriers as well as to help prevent rate increases that would increase prices to U.S. consumers. New benchmarks are also necessary to address the high termination surcharges required by foreign mobile carriers -- a fast-growing problem that threatens to reverse much of U.S. carriers' recent progress in reducing international settlement rates and results in increased prices to U.S. consumers.

The Commission has previously refused to "accept the view of certain foreign governments and carriers that the U.S. government must agree to allow U.S. carriers to settle their traffic at whatever rates the foreign carrier deems appropriate regardless of the impact on the U.S. public interest."[1] The Commission also rejected arguments that it must entrust U.S. consumer interests to the inconsistent and prolonged deliberations of foreign regulators -- as foreign carriers seeking to preserve their huge settlement rate subsidies have once again argued in this proceeding. The Commission remains the *only* regulator that can prevent harm to U.S. consumers by addressing the continuing problem of unreasonably high international settlement rates in a comprehensive and meaningful way.

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[1] *International Settlement Rates*, 12 FCC Rcd. 19806, ¶ 311 (1997) ("*Benchmarks Order*").

1. <u>The Commission should revise international settlement rate benchmarks.</u>

The Commission's existing settlement rate benchmarks were established in 1997 and have saved U.S. consumers billions of dollars.[2] However, for most countries, the benchmarks are now too outdated to further the Commission's longstanding policy of reducing international settlement rates to cost-based levels. Section 43.61 data for 2001 show that the average U.S. settlement rate with all foreign countries is now 14 cents -- less than the lowest benchmark rate established seven years ago of 15 cents. While settlement rates have fallen, foreign termination costs have also declined and, on average, are now no higher than 4 cents for termination on fixed networks. New benchmarks reflecting those lower costs are necessary to encourage further reductions in settlement rates toward cost-based levels.

AT&T's revised tariffed components price ("R-TCP") study of 65 countries, filed on February 5, 2004, uses current foreign carrier tariff data to provide a very conservative cost ceiling for the network components used to terminate international calls.[3] This study shows an average cost ceiling for termination on fixed networks of approximately 4 cents per minute.[4] AT&T has negotiated rates at (and below) this level on a number of international routes, but has much less ability to obtain low rates on many routes where market forces are absent or not well-developed. Global competition has increased since 1997, but monopoly carriers still control the fixed telecom networks in almost three out of four foreign countries.

On many routes, the existing benchmarks provide no effective downward pressure because they are far above current rate levels. Some foreign carriers and governments even use the benchmarks to support requests for rate *increases* with U.S. carriers. In establishing the existing benchmarks, the Commission's 1997 *Benchmarks Order* emphasized that "periodic revisions" would be necessary "to avoid the problem in the future of our benchmarks not keeping pace with cost reductions, and to encourage further movement toward cost-based rates."[5] Almost seven years later, those revised benchmarks are now long overdue.

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[2] U.S. carrier average per minute settlement costs fell by 15 cents from 1997-2001, which provided cumulative savings in settlement costs of $9 billion from 1998-2001 based on constant 1997 U.S.-outbound traffic volumes. These savings were fully reflected in lower U.S. carrier prices. In the same period, U.S. carrier average international call revenues fell by 34 cents per minute -- more than twice as much as reductions in settlements costs -- and resulted in cumulative savings from lower prices of $17 billion.

[3] Letter dated Feb. 4, 2003 to Marlene Dortch, Secretary, FCC, from Douglas S. Schoenberger, AT&T.

[4] Using the development categories adopted by the *Benchmarks Order*, the new study shows average TCP rates of approximately 3.75 cents for upper-income countries, approximately 4 cents for upper and lower middle income countries and approximately 4.75 cents for lower income and "teledensity less than one" countries.

[5] *Benchmarks Order*, ¶ 112.

2. Separate benchmarks are necessary for traffic terminated on mobile networks.

With the rapid global growth of mobile calling, an increasing volume of U.S.-outbound international traffic now terminates on foreign mobile networks. The high termination rates charged by many foreign mobile carriers threaten to reverse much of the progress made in reducing international settlement rates. Relatively few international calls were terminated on foreign mobile networks when the existing benchmarks were established in 1997 and there were no surcharges for this traffic. Today, AT&T pays surcharges to terminate international calls on foreign mobile networks in *more than ninety* countries that can be more than 25 cents per minute.

There is no cost justification for high foreign mobile termination rates. AT&T's revised tariffed components price study of 65 countries uses current foreign carrier tariff data to provide a very conservative cost ceiling for the network components used to terminate international calls on foreign mobile networks. This study shows an average cost ceiling for termination on foreign mobile networks of 8.23 cents per minute.[6]

Strong support for Commission action on mobile termination rates is provided by a new study published in January 2004 by Ovum.[7] Its first two "key findings" are that "[t]here are no effective market mechanisms to curb the price of the mobile termination service" and that "[t]here is considerable evidence that mobile termination rates (MTRs) are well above costs in most countries. We estimate that profit margins of over 100% are commonplace for most mobile network operators (MNOs)."[8] Ovum states that "[I]n markets where the calling party pays for making calls to a mobile phone, mobile termination rates take on the characteristics of a 'bottleneck' service."[9] It finds that mobile rates are on average 15 times higher than fixed termination rates and that "the 15:1 ratio in call termination prices has remained virtually unchanged over the past three years."[10] The result is "large subsidies for [mobile operators]." Consequently, mobile rates "need to be regulated and brought towards cost levels in order to correct these competitive distortions and network inefficiencies."[11]

Ovum highlights the unjustifiable gap between current mobile termination prices of, on average, 13.74 euro cents (17.31 U.S. cents) and its conclusion that "based on available cost models and cost proxies for mobile termination, the regulated MTRs in any developed country should be a maximum of 6 euro cents [(7.5 U.S. cents)] per minute within three to four years."[12]

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[6] Using the *Benchmarks Order* development categories, the study shows average TCP mobile termination rates of approximately 8 cents for upper-income countries, approximately 8.5 cents for upper and lower middle income countries and approximately 8.5 cents for lower income and "teledensity less than one" countries.

[7] David Rogerson, *Mobile Termination Rates*, Ovum, Jan. 2004.

[8] *Id.* at 1.

[9] *Id.* at 4.

[10] *Id.* at 8-9.

[11] *Id.* at 1.

[12] *Id.* at.2, 10 (currency conversion added). Currency conversions based on February 8, 2004 rate of 1 Euro = 1.26 USD.

Notably, Ovum's estimated cost-based rate is lower than the average mobile TCP cost ceiling of 8.23 cents that is shown by AT&T's tariffed components pricing analysis. As AT&T has shown, and independent analysts such as Ovum confirm, this is a problem for U.S. consumers that the Commission can neither ignore nor entrust to foreign governments.

It is settled that the Commission has authority under the Communications Act, relevant case law, and international regulations to adopt settlement rate benchmarks governing rates paid for international telephone service,[13] and there is absolutely no basis to suggest that international mobile traffic, which plainly is international telephone service, is outside the scope of this conclusion. To encourage reductions toward cost-based levels, the Commission should propose new separate benchmarks, based on current data, for traffic terminated on mobile networks.

3. Foreign carriers cannot justify the huge subsidies they still receive from U.S. consumers.

Predictably, foreign carriers and their U.S. affiliates oppose new benchmarks because they wish to continue to receive huge above-cost subsidies from U.S. consumers. Their arguments echo many of the foreign carrier arguments the Commission dismissed in the *Benchmarks Order* -- which the D.C. Circuit subsequently upheld "in its entirety."[14]

India's monopoly carrier, Videsh Sanchar Nigam Limited (VSNL") requests that any new benchmark rate for India should allow recovery of the blatantly discriminatory "Access Deficit Charge" India imposes on U.S. international calls of 4.25 Rupees (9.3 cents) per minute -- which is as much as *fourteen times higher* than the Access Deficit Charge for domestic long distance traffic in India.[15] However, the *Benchmarks Order* specifically rejected the exact same foreign carrier argument. The Commission stated: "[T]o the extent that commenters argue our TCP methodology should be revised to take into account discriminatory local access charges or universal service subsidies aimed solely or disproportionately at international termination services, we disagree."[16] VSNL does not otherwise dispute the revised TCP rates shown by AT&T's new study of under 2 cents per minute for termination on fixed networks in India and under 3 cents for termination on mobile networks.

Similarly, CANTO, an association of foreign carriers from the Caribbean region, virtually all of which are monopolies, lists purported "issues" that the Commission long ago dismissed or that otherwise fail to withstand scrutiny.[17] CANTO first wrongly contends that benchmarks conflict with international and foreign law. The Commission emphasized in 1997 that benchmarks are consistent with WTO requirements, and are "consistent with international law and the regulations of the ITU."[18] As the Commission noted, ITU Recommendation D.140 states

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[13] *Benchmarks Order*, ¶ 275.

[14] *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1226 (1999).

[15] Letter dated Jan. 20, 2004 to Ms. Marlene Dortch, Secretary, FCC, from Robert J. Aamoth, Counsel for VSNL.

[16] *Benchmarks Order*, ¶ 87.

[17] Letter dated Jan. 20, 2004 to Ms. Marlene Dortch, Secretary, FCC, from Robert J. Aamoth, Counsel for CANTO, at 2 ("CANTO Letter").

[18] *Benchmarks Order*, ¶¶ 109, 311. *See also*, CANTO letter at 2.

that "accounting rates . . . should be cost-oriented," and therefore supports the benchmarks policy.[19] Further support for benchmarks is provided by the WTO Reference Paper requirement for cost-oriented interconnection rates. CANTO fails to show the existence of any other purported "conflict[] with foreign laws and regulation."[20]

There also is no basis to CANTO's claim that above-cost settlement rates serve a "public policy goal" of increasing investment in foreign network infrastructure.[21] The Commission has rejected the notion that U.S. consumers are required to pay subsidies to foreign carriers and has emphasized that hidden settlement rate subsidies cannot be compared to U.S. universal service policies.[22] The Commission found that "it is fundamentally unfair and inconsistent with the public interest for U.S. consumers to continue to pay high IMTS rates because of above-cost settlement payments to foreign carriers."[23] There is also no basis to CANTO's claim that cost reductions resulting from benchmarks are not fully reflected in lower U.S. prices.[24] As noted above, FCC data show that since the *Benchmarks Order* there have been much greater reductions in U.S. prices than savings in settlement costs.[25]

CANTO fails in its efforts to question the accuracy of AT&T's revised tariffed components price as providing a very conservative ceiling for international termination costs. CANTO does not show that foreign carrier international and domestic private line tariffs are "below-cost (*i.e.*, subsidized)" simply because they "may be provided to only a few large customers."[26] The Commission dismissed the same claim by the Guyana monopoly carrier, GT&T (a CANTO member), in the *Benchmarks Order*.[27] Significantly, neither CANTO nor any foreign carrier during the benchmarks proceeding or thereafter has responded to the Commission's invitation to put forward cost data.[28] In the absence of such data, foreign carrier tariffs provide a very generous surrogate, as the Commission found in the *Benchmarks Order*. Many of the foreign carrier tariffs used by the tariffed components pricing study are for monopoly services that are subject to little or no pricing constraints.

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19 *Benchmarks Order*, ¶ 313.
20 *Id.* at 2-3.
21 CANTO Letter at 3.
22 *Benchmarks Order*, ¶ 148. *See also*, *Atlantic Tele-Network, Inc.*, 16 FCC Rcd. 20263, ¶ 8 (2001). For similar reasons, CANTO is wrong in requesting foreign exemptions from benchmark rates similar to U.S. Section 251(f) exemptions from TELRIC rates for rural telephone companies. CANTO Letter at 8.
23 *Benchmarks Order*, ¶ 312.
24 CANTO Letter, ¶ 13.
25 *See also,* AT&T Reply Comments at 16-17 (average net settlement rate fell by 15 cents from 1997-2001, while average prices fell by 34 cents).
26 CANTO Letter at 6.
27 *Benchmarks Order*, ¶ 77 ("GT&T argues that international private line rates are not a meaningful estimate of a carrier's transmission costs because, in developing countries, international private line service may be directed at only a few strategic customers.") The Commission also dismissed the claim CANTO repeats here that benchmarks should be applied to "effective" rather than "notional" rates. *Id.*, ¶ 72; CANTO Letter at 9. Settlement rates are charged on *every* minute, irrespective of any "netting" for payment purposes.
28 *Benchmarks Order*, ¶ 88.

As the D.C. Circuit explained in rejecting foreign carrier challenges to the *Benchmarks Order*, "[s]ince petitioners refused to let the Commission see their cost data, and since the Commission thoroughly explained why 'the TCP methodology provides a reasonable basis for establishing settlement rate benchmarks in the absence of carrier-specific cost data,' we have no firm basis for accepting petitioners' claim that the benchmark rates are not fully compensatory."[29]

The use of a tariffed components pricing analysis for international settlement rate benchmarks merely requires foreign carriers terminating U.S. international calls to treat U.S. carriers no differently than their own domestic customers -- *i.e.*, to provide non-discriminatory treatment. According to CANTO, a foreign carrier may provide purportedly "below cost" rates to its own consumers, while charging above-cost rates when the same network components are used to terminate inbound U.S. calls. As the Commission made clear in the *Benchmarks Order*, U.S. consumers are not required to subsidize foreign carriers in this way.

CANTO also is wrong in contending that benchmarks should be removed where U.S. carriers "have, or could obtain" authority to establish their own international gateways.[30] The Commission has rejected similar foreign carrier arguments that benchmarks should not apply on routes where there is effective competition. The Commission found "it will take time for vigorous competition to create efficient pricing" and that such exemptions may not be consistent with MFN obligations.[31] CANTO's proposal fails to overcome these drawbacks and also ignores many other foreign market conditions that may prevent a U.S. carrier operating an international gateway in a foreign market from terminating traffic at cost-based rates, such as the absence of cost-based domestic interconnection rates. Moreover, U.S. carrier traffic volumes on individual routes are frequently insufficient to justify such investments.

4. <u>Foreign mobile carriers also show no cost justification for their high surcharges.</u>

AT&T Wireless Services, Inc. ("AWS") contends that the application of benchmarks to the mobile termination rates charged by its foreign mobile affiliates in the Caribbean would "preclude AWS from recovering its costs in these small markets" and "jeopardize AWS's business case even for operating in those markets."[32] However, AWS puts forward no evidence to support these bare assertions. In any event, mobile benchmarks based on AT&T's tariffed components pricing analysis would allow recovery of all relevant costs. Also, the Commission's established benchmarks procedures allow any foreign carrier to seek reconsideration of benchmark rates "on the grounds that they do not permit the recovery of the incremental costs incurred to receive, transmit and terminate international service" by "demonstrat[ing] that the

[29] *Cable & Wireless P.L.C. v. FCC*, 166 F.3d at 1233. Additionally, because the tariffed components price analysis is not a TELRIC study, and results in benchmark rates many multiples greater than TELRIC rates, CANTO fails to question the appropriateness of new benchmarks by referring to Commission domestic proceedings concerning the application of TELRIC and possible modifications to TELRIC rules. CANTO Letter at 3.

[30] *Id.* at 8.

[31] *Benchmarks Order*, ¶ 114.

[32] Letter dated Jan. 23, 2003 to Ms. Marlene Dortch, Secretary, FCC, from Kent D. Bressie, Counsel, AWS, at 2.

relevant incremental costs are higher than the established benchmark."[33] Thus, AWS has no basis for concern that mobile benchmarks would prevent the recovery of costs.

T-Mobile USA, Inc. ("T-Mobile") is clearly mistaken in claiming there is "no evidence" that benchmarks would lower foreign mobile termination charges.[34] The application of mobile benchmarks based on a 8 cent per minute average cost ceiling for termination on mobile networks in upper-income countries and a 8.5 cent per minute average cost ceiling for other countries -- as shown by AT&T's revised tariffed component pricing study -- would reduce U.S. carrier payments in more than eighty countries where AT&T currently pays above these amounts to terminate mobile traffic.[35]

AT&T has shown that foreign mobile claims regarding the supposed "complexity" of CPP payment regimes, such as those made here by T-Mobile, fail to withstand analysis and that all CPP mobile carriers possess bottleneck market power over termination on their networks.[36] The same finding has been made by various foreign regulators and by the new Ovum report cited above. Basic economic analysis makes clear there is no market constraint on CPP mobile network termination rates. On the demand side, called parties on a CPP carrier's network pay nothing to receive calls and therefore have little or no sensitivity to high termination rates. There also is no constraint on the supply side, because calls can only be terminated on the particular network serving the called party. For these reasons, contrary to the claim by CTIA, competition on an international route cannot prevent foreign mobile carriers from abusing their market power by charging unreasonably high termination rates -- as shown by the fact that many countries with telecommunications markets that are otherwise quite competitive, including European Union Member States, Australia, and New Zealand, have very high mobile termination rates.[37]

CTIA's further claim that settlement rate benchmarks address "the wrong underlying costs" in CPP regimes is also misplaced.[38] The fact that CPP termination rates are "not limited to recovering the costs of terminating a call, but instead [are] *designed* to recover a broader range of carrier costs, such as billing, marketing, infrastructure, etc," as CTIA contends, merely confirms that CPP mobile carrier termination rates are *not* cost-based.[39] "Cost-based" settlement

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[33] *Benchmarks Order*, ¶ 88.

[34] Letter dated Feb. 2, 2004 to Ms. Marlene Dortch, Secretary, FCC, from Cheryl A. Tritt, Counsel for T-Mobile ("T-Mobile Letter").

[35] Opponents of mobile benchmarks also fail to show that mobile benchmarks would be ineffective because U.S. carriers deal with foreign international carriers that hand-off mobile-destined traffic to a foreign mobile carrier. Frequently, this "hand-off" is simply to an affiliate. Foreign international carriers have mobile carrier affiliates in virtually all countries where AT&T pays mobile surcharges. In forty of those countries, mobile carriers affiliated with AT&T's international correspondents have market shares totaling 50 percent or more, including in many of the countries where AT&T pays the highest mobile surcharges, such as Australia, Belgium, Chile, Colombia, Finland, France, Germany, Hungary, Italy, Japan, New Zealand, Norway, Peru, Spain, Sweden, and Switzerland. Additionally, foreign international carriers themselves sometimes add further non-cost-justified charges to the mobile carrier surcharge.

[36] AT&T Reply Comments at 22-23; T-Mobile Letter at 2.

[37] Letter dated Feb. 13, 2004 to Ms. Marlene Dortch, Secretary, FCC, from Diane Cornell, CTIA ("CTIA Letter").

[38] *Id.*

[39] *Id.* (emphasis in original).

rates, the longstanding policy of the Commission, refer to the "costs incurred by foreign carriers to terminate international traffic" -- not to other unrelated costs such as billing, marketing, infrastructure etc.[40] Thus, the Commission established the existing benchmarks "because . . . the settlement rates U.S. carriers pay foreign carriers to terminate U.S.-originated traffic are in most cases substantially above *the costs foreign carriers incur to terminate that traffic*."[41] Indeed, the *Benchmarks Order* specifically states that "costs which would *not* be included in cost-based settlement rates" include "costs associated with marketing, allowances for uncollectible billings and other retail communications services to consumers."[42] It is also irrelevant that "the point of a calling party pays regime" -- as CTIA contends -- is "to recover a significant portion of the costs of the mobile network from the calling party."[43] The Commission has made clear, as noted above, that U.S. consumers should not have to pay "artificially high prices for international services" because of above-cost settlement rate subsidies demanded by foreign carriers.[44]

5. <u>The Commission cannot rely on foreign regulators to safeguard U.S. consumers</u>.

The Commission cannot prevent harm to U.S. consumers from high foreign mobile termination charges by relying on the efforts of foreign regulators to address foreign mobile termination charges, which is the approach suggested by Vodafone, T-Mobile and other opponents of mobile benchmarks.[45] As described above, Ovum finds that the 15:1 ratio by which mobile termination rates are higher than fixed termination rates has barely changed over the past three years. In the large majority of the 90 countries where AT&T pays mobile surcharges, there has been no regulatory action at all. While several foreign regulators have recognized that mobile operators are abusing their power in the market for call termination services, beyond confirming the existence of a problem, these regulators are not enforcing adequate remedies. Only one regulator in the world, South Korea's Ministry of Information and Communications, has taken regulatory action that has resulted in the implementation of reductions in rates even close to the level required by the tariffed components pricing analysis. As described below, the UK regulator has prescribed rates close to this level but these are not yet in effect and are scheduled to expire in 2006.

Elsewhere, foreign regulatory action falls far short of this mark, either imposing no remedy at all, or imposing an inadequately small remedy, or postponing the implementation of a proposed remedy for an unacceptably long period. Most notably, the vast majority or foreign regulators have simply failed to address this issue at all. In this last extremely large category are countries such as New Zealand, where the settlement rate for mobile traffic is increasing and currently exceeds approximately 23 cents, yet the regulator shows no signs of initiating a review. In Jamaica, the regulator mandated a mobile termination rate *increase* in January 2004 to almost

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40 *Benchmarks Order*, ¶ 29. *See also, Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶ 1 (1991) ("international accounting rates should be cost-based").
41 *Id.*, ¶ 2.
42 *Id.*, ¶ 44 (emphasis added).
43 CTIA Letter at 1.
44 *Benchmarks Order*, ¶ 2.
45 Letter dated Dec. 4, 2003 to Ms. Marlene Dortch, Secretary, FCC, from Carolyn W. Brandon, Vodafone Americas, Inc.; T-Mobile Letter at 2.

17 cents.[46] In Germany the regulator has repeatedly opposed mandating mobile termination rate reductions and there is pending legislation that would prevent any regulation of mobile termination rates by prohibiting ex ante regulation of a wholesale market if an associated retail market is deemed competitive.

A review of regulatory proceedings in Western Europe demonstrates that foreign regulators are not adequately safeguarding U.S. consumer interests. Other parties have urged the FCC to rely on the corrective impact of the European Commission's Recommendation on Relevant Markets, which designated the market for voice call termination on individual mobile networks as one where Member State remedies are presumptively necessary.[47] However, the Recommendation is just that -- a recommendation to European Union Member States, and not a conclusive analysis or remedy in itself. Each Member State must assess independently whether operators have Significant Market Power ("SMP") "as soon as possible," and then must establish and enforce appropriate remedies.[48]

European Union Member State progress conducting these reviews has been insufficient at best, with only two out of fifteen countries completing the review. As noted above, the German regulator RegTP has stridently asserted its disagreement with this market recommendation, and before conducting substantive analysis, has expressed its intent to impose no remedy. The Finnish regulator, Ficora, designated operators with SMP, but did not impose cost-orientation obligations on mobile termination rates.[49] The UK regulator, OFTEL, did designate SMP operators, and imposed rate reductions in a range that come close to meeting AT&T's recommended TCP cost ceiling (*i.e.*, 4.61-5.19 pence per minute / 8.5-9.6 U.S. cents), but the implementation of these reductions has been delayed several times, currently until no sooner than April 2004 and is anticipated to be later than that. These rates will expire in 2006, leaving an open question as to what happens thereafter. All other European Union Member State actions have been inadequate, still allowing above-cost mobile termination rates of between 13 cents and 22 cents or higher. For example, between March 2002 and present, the Greek regulator, EETT, has been urging its mobile operators to reduce mobile termination rates, but during this period AT&T's settlement rate for mobile terminating traffic in Greece has substantially increased to over 25 cents.

Beyond Western Europe, foreign regulatory remedies are even less reliable, with only a handful of regulators in Asia and the Americas even addressing the surging problem. In sum, foreign regulation of mobile termination rates is at best sporadic and insufficient, and more

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[46] Office of Utilities Regulation, *Decision on Settlement Rates* (Jan 23, 2004).

[47] Commission Recommendation 2003/31/EC on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, OJ L 114, 8.05.2003, p.45, market 16 of the Annex.

[48] It is also noteworthy that the Commission's Recommendation on mobile termination markets is open for review in June 2004, and if opponents succeed in prospectively excluding this market from future Commission Recommendations, it is unclear whether any Member State mobile termination remedies would be sustained under EU law.

[49] Finnish Communications Regulatory Authority (FICORA), Notification on Market for Voice Call Termination on Individual Mobile Networks, Case FI/2003/0031 (Nov. 21, 2003).

typically, there has been no attempt to regulate this highly profitable revenue for their mobile operators.

This record precludes any finding that foreign regulatory action makes mobile benchmarks unnecessary on all routes. And even if the Commission concluded that *some* foreign regulators have taken sufficient action, it has previously found that withholding benchmarks from some routes based on foreign market conditions would raise MFN concerns.[50] Also, the Commission has previously refused to consider the effectiveness of foreign regulation on a route-specific basis because of the difficulty of obtaining the necessary information. In establishing its rules preventing the abuse of market power by dominant carriers in foreign countries, the Commission found that "obtaining sufficiently reliable and timely information about a foreign regulatory regime is a difficult, resource-intensive, and time-consuming process."[51] For this reason, the Commission applies its dominant carrier rules on *all* routes where the foreign affiliate of a U.S. carrier has market power "without conducting a separate analysis of the effectiveness of a foreign country's regulatory regime."[52]

The Commission adopted the same solution in applying the existing benchmarks on all routes, although it recognized that "in markets where there is fully developed competition, settlement rates will likely be below the benchmarks."[53] The Commission noted that "[a]s a practical matter" the benchmarks would simply be "a moot question" where rates were already below benchmarks.[54] Similarly here, as a practical matter, mobile benchmarks will only affect countries where mobile termination rates are above the benchmarks.

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AT&T would be pleased to answer any questions concerning these matters.

Respectfully submitted,

James Talbot

James J. R. Talbot

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[50] *Benchmarks Order*, ¶ 114.

[51] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, ¶ 230 (1997).

[52] *Id.*

[53] *Benchmarks Order*, ¶ 115.

[54] *Id.*

cc: Sheryl Wilkerson, Office of Chairman Powell
Sam Feder, Office of Commissioner Martin
Paul Margie, Office of Commissioner Copps
Jennifer Manner, Office of Commissioner Abernathy
Barry Ohlson, Office of Commissioner Adelstein
Donald Abelson, International Bureau
James Ball, International Bureau
Lisa Choi, International Bureau
Alexandra Field, International Bureau
Gardner Foster, International Bureau
Anna Gomez, International Bureau
Cara Grayer, International Bureau
Joseph Levin, Wireless Telecommunications Bureau
Mark Uretsky, International Bureau
Douglas Webbink, International Bureau